UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

INTER-CON UPSP SERVICES CORPORATION

Employer

and **Case No. 5-RC-15344**

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

and

INTERNATIONAL UNION OF UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Inter-Con UPSP Services Corporation (the Employer), a California corporation with a main office in Pasadena, California and work sites in a number of states around the United States, is engaged in the business of providing security services to agencies of the Unites States Government and to private corporations. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations described above, provided services valued in excess of $50,000 in states other than the State of California. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

At the hearing, the name of the Employer was amended to Inter-Con UPSP Services Corporation and the Intervenor's name was amended to International Union of United Government Security Officers of America.

At the hearing, the International Union of Security, Police and Fire Professionals of America (the Petitioner) amended the petition to seek an election among employees in the existing contractual unit, as follows:

> All full-time and regular part-time armed security officers, lieutenants, sergeants, diplomatic security assistants and security drivers employed by the Employer in Washington, DC, Maryland, Virginia, California, New Hampshire, South Carolina, New York, Florida, Kentucky, Illinois, Massachusetts, Hawaii, Washington state, Texas, Pennsylvania, Connecticut and Louisiana under its contract with the United States Department of State, but excluding all captains, managers, deputy project managers, office clericals and supervisors as defined in the Act.

The parties stipulated that the petitioned-for unit is an appropriate unit. There are approximately 513 employees in the stipulated unit. The Intervenor was certified by the Board on November 13, 1998 in Case 5-RC-14692 as the representative of a very similar bargaining unit. The Intervenor and Employer had a collective bargaining agreement that expired on October 1, 2001, and thereafter there were a series of short-term extensions. No party contends that there is a contract bar to this petition.

The parties stipulated, and I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

The Petitioner presented as its witness International president David Hickey. The Employer presented as its witness president Leonard Mueller. The Intervenor did not present any witnesses. The parties waived the filing of briefs.[1]

[1] At the hearing, the Intervenor requested that the petition be dismissed due to "a flaw in the authorization cards." It is well established that the adequacy of the showing of interest is an administrative matter not subject to litigation. *General Dynamics Corp.,* 175 NLRB 1035 (1969); *O.D. Jennings & Company*, 68 NLRB 516 (1946). I am administratively satisfied that the Petitioner's showing of interest is adequate and sufficient to warrant the holding of an election.

SECTION 9(b)(3)

Section 9(b) states in pertinent part:

> (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof: *Provided,* That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership employees other than guards. (emphasis added).

The Intervenor contends that the petition should be dismissed because the Petitioner cannot be certified as the employees' collective bargaining representative, as it admits as members employees other than guards. The Intervenor contends that the Petitioner represents firefighters who are not considered guards for the purposes of Section 9(b)(3) of the Act. Other than citing to *Boeing Co.*, 328 NLRB 128 (1999), the Intervenor did not present any witnesses or other evidence to substantiate its contention. In *Boeing Co.*, the Board found that the employer's firefighters, in light of their duties, were no longer statutory guards. In that case, the incumbent union, a predecessor of the Petitioner herein, had been certified by the Board in 1956 for a unit composed of both firefighters and security guards, since the Board found in that case that the firefighters were statutory guards.

The Petitioner asserts that it is a guard union under Section 9(b)(3) of the Act and there is no basis to challenge such status. In support of its assertion, the Petitioner presented as its witness its International president David L. Hickey. Mr. Hickey testified that the Petitioner admits for membership security officers whose responsibilities include, among other things, fire protection duties. Mr. Hickey stated that the Petitioner does not represent firefighters, only fire protection officers.

Based upon the Intervenor's failure to produce any probative evidence at the hearing to establish that the Petitioner admits nonguards to membership, I reject the Intervenor's contention that the Petitioner is not a certifiable union. In this regard, I also rely on the Board's policy requiring that the noncertifiability of a guard union must be shown by definitive evidence. As the Board has consistently recognized since *Burns Security Services, 278 NLRB 565 (1986)*, "it would be contrary to the clear intent of Congress to allow [a party] to establish noncertifiability by collateral litigation of the guard status of other employer's employees, i.e., by attempting to show that the union 'may represent someone somewhere who we would find in a appropriate proceeding is not a guard.'" *Children's Hospital of Michigan*, 317 NLRB 580, 583 (1995), quoting *Burns Security*, 278 NLRB at 568-569. Accord, *Rapid Armored Corp.*, 323 NLRB 709 (1997). For these reasons, I deny the Intervenor's motion to dismiss the petition.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) or INTERNATIONAL UNION OF UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA or NEITHER.**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.,* 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility,* 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **MARCH 21, 2002.**

Dated March 7, 2002

at Baltimore, Maryland /s/ WAYNE R. GOLD
Regional Director, Region 5

393-6081-2001